IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 7414 of 2006(G)

CMA.29/2005 of DISTRICT COURT, KASARAGOD
OS.343/2004 of PRL.MUNSIFF, KASARAGOD
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PETITIONER:

ESSAKKIYAMMAL,
SUBBU, NO.412, THODAKKAM ROAD, MILK COLONY,
COIMBATORE-600002.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS:
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1. CORPORATION BANK,
KASARAGOD BRANCH, REP. BY THE BRANCH MANAGER,
A.M. SURENDRAN NAIR, S/O. P.K.K. NAIR,
KASARAGOD KASBA VILLAGE, KASARAGOD TALUK.

2. SUBBU, S/O. P.S. RAVI,
NO.412, THODAKKAM ROAD, MILK COLONY,
COIMBATORE-600002.

3. V. THOMES, S/O. ANTONY,
VALAYANAYAL HOUSE, BANDADKA, KASARAGOD TALUK,
P.O. BENDADKA.

4. C.C. SANTHAMMA, W/O. KAMALAKSHAN,
THURUTHIMADAM, BANDADKA, KASARAGOD TALUK,
P.O. BENDADKA.

5. THE AGRICULTURAL OFFICER,
KRISHI BHAVAN, KUTTIKOLE (GARNISHEE).

6. THE PRINCIPAL AGRICULTURAL OFFICER,
P.O. KASARAGOD.

BY ADV. SRI.M.THAMBAN
SRI.P.JACOB VARGHESE,SC, CORPN. BANK
GOVERNMENT PLEADER SMT. R. BINDU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF PLAINT IN OS 343/04.

EXT.P2 TRUE COPY OF IMPLEADING PETITION.

EXT.P3 TRUE COPY OF MEMORANDUM OF APPEAL

EXT.P4 TRUE COPY OF JUDGMENT IN CAM 29/05

EXT.P5 TRUE COPY A PETITION INTIMATION.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 7414 OF 2006

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Dated this the 18th day of June, 2007.

J U D G M E N T

This writ petition is filed seeking to call for the records in Ext.P4 and quash Ext.P4. The said order is passed by the Court below in an application filed under Section Order 38 Rule 5 of the C.P.C. One Raja borrowed a sum of Rs.1 lakh from the first respondent Bank in October, 2003 and he died on 4.5.04 and thereafter the plaintiff has instituted a suit for realization of the amount and as an interim prayer sought for the attachment of the Provident Fund amount due from Raja.

2. It appears that the parties are governed by the provisions of the Hindu Succession Act. I am informed that Raja died without wife and children and so the class I legal heir u/s 8 of the Hindu Succession Act is only the mother and father has nothing to do with the property. When it is so, the mother is a necessary party to the suit and any orders passed behind her back may not be correct. It is only subsequent to the order of attachment that is made, the mother is made a party and she was never given an

opportunity to put forth her case on merits. Therefore, the orders passed by the Court below requires interference and therefore it is set aside. The Munsiff Court, Kasaragod is directed to restore I.A.1779/04 and the plaintiff is directed to implead the mother also as a party in the application for attachment and after hearing all parties orders may be passed.

The learned Government Pleader has informed that the amount is now in the Court deposit. Let it be there in the Court deposit and the matter be pursued and disposed of as expeditiously as possible and in case there is going to be some delay, the Court may put the amount in some fixed deposit so that the entitled party shall not loose interest. But, the matter may be disposed of as expeditiously as possible untrammeled by the observations in any of the orders previously passed by the authorities.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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